



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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MEMORANDUM

DATE: December 3, 2015

TO: Judges
cc Court Administrators
Probate Registers
County Clerks
Case Management System Vendors

FROM: Julia Norton, Collections Management Analyst

RE: Pending Electronic Filing Legislation

The *pending* electronic filing legislation bills (House Bills 5028, 5029, 5030 and Senate Bills 531, 532, 533) are positioned to be enrolled in mid-December with an effective date of January 1, 2016. The State Court Administrative Office generally refrains from communicating the impact of *pending* legislation, but due to the upcoming holidays and short timeframe for programming changes before the anticipated effective date, we are notifying the courts of this legislation and the potential impact upon the courts.

Proposed Legislation

HB 5028, 5029 and 5030 and SB 531, 532, and 533 amend various sections of the Revised Judicature Act of 1961 (RJA). All six bills are tie-barred together.

HB 5028 (H-1) will add Chapter 19A Electronic Access to Courts and provides definitions for terms used in this Chapter, including:

- Automated Payment: an electronic payment method including payments made with credit and debit cards.
- Civil Action: action that is not a criminal case, a civil infraction matter, a proceeding commenced in the probate court under MCL 700.3982, or a proceeding involving a juvenile under MCL 712A.1 to 712A.32.
- Electronic Filing System: a system authorized by the Supreme Court for the electronic filing of documents using a portal contracted for by the State Court Administrative Office.

HB 5029 (H-1) will add sections 1986 and 1987 to the RJA and require the court to collect an “electronic filing system fee” in addition to the filing fees for commencing a civil action. The electronic filing system fees are:

- \$25 for civil actions filed in the Supreme Court, Court of Appeals, circuit court, probate court, and court of claims.
- \$10 for civil actions filed in the district court, including summary proceedings actions.
- \$20 for civil actions filed in the district court if a claim for money damages is joined with a claim for relief other than money damages.
- \$5 for civil actions filed in the small claims division of the district court.

The above-mentioned fees are paid by the party who files the civil action regardless of whether the civil action is filed electronically. If the court waives the party's filing fee because of indigency or inability to pay, the court shall also waive the electronic filing system fee. The bill exempts a party that is a governmental entity from paying the electronic filing system fee.

The bill also provides that the clerk may accept "automated payment of any fee being paid to the court" and it specifically addresses merchant transaction fees. The bill states that, if the bank charges the court or funding unit a merchant transaction fee, then the court may charge the person paying a fee by automated payment (i.e. credit or debit card) the additional automated payment service fee, as authorized by the State Court Administrative Office.¹ However, that fee shall not exceed the actual merchant transaction fee that is charged to the court or funding unit, or 3 percent of the automated payment, whichever is less.

With two exceptions, the electronic filing system fee is the only fee that may be charged to or collected in a civil action specifically for electronic filing. The court is permitted to charge the automated payment service fee (above). Additionally, if the court has an administrative order² regarding electronic filing *and* was collecting a fee for electronic filing on September 30, 2015, the court or funding unit may continue to collect the following, in addition to the electronic system filing fee, until December 31, 2016: \$2.50 for filing *or* service; \$5 for filing *and* service.

HB 5030 (H-1) will add section 1989 to the RJA and provides that the electronic filing system fee collected by the court shall be remitted by the clerk to the state treasurer to be deposited into the "judicial electronic filing fund" (created in SB 532). The fund shall be used to establish an electronic filing system and supporting technology.

SB 531 (H-2) will amend the RJA by adding sections 1990, 1991, 1992, and 1993. These sections provide that:

- The electronic filing system fee paid by the party filing the civil action is a recoverable taxable cost.
- Courts may apply to the Supreme Court for access and use of the e-filing system.
- If the Supreme Court accepts a court, then the State Court Administrative Office shall use money from the judicial electronic filing fund to pay for technology upgrades necessary for the court to operate an e-filing system.
- The Supreme Court may select a qualified vendor for the e-filing system.
- A court shall not require or permit a person to file a document electronically except as directed by the Supreme Court.
- The electronic filing system fee cannot be collected later than five years after the effective date of the bill.

¹ If the legislation passes, SCAO will authorize the same fee as the legislation, which is the actual merchant transaction fee that is charged to the court or funding unit, or 3 percent of the automated payment, whichever is less.

² There are currently e-filing programs in C03-Wayne, C06-Oakland, C16-Macomb, C13-Grand Traverse, C20-Ottawa, the COA and MSC.

SB 533 (H-2) adds section 1988 to the RJA and provides that a court shall not charge a fee for retrieval or inspection of a document on site. This prohibition includes documents that were filed electronically. The court may charge a fee to copy a document.³

Transmitting Funds to Treasury

HB 5030 (H-1) will require the court to remit the electronic filing system fee to Treasury for deposit into the judicial electronic filing fund.

If this package of legislation passes, the Fee Transmittal for State of Michigan forms (Treasury forms 57 and 257) will be changed to add a line for the Judicial Electronic Filing Fund. Treasury is responsible for modifying these forms and will notify the State Court Administrative Office and local funding units when the revised forms are available.

Case management system updates will be necessary to accommodate the change to the state transmittal forms. Judicial Information Systems (JIS) is aware of the pending legislation and is prepared to make programming modifications to its DCS case management system. If you are not a JIS court and you generate the state transmittal form, you will need to contact your vendor about case management system changes. In the alternative, courts may manually complete the state transmittal form.

If you have any questions regarding the treasury transmittal process, please contact Becky Mack at MackB@courts.mi.gov or 517-373-2342.

Cash Codes

All courts may need to create or modify cash codes in their case management system to accommodate the electronic filing system fee. JIS will advise its courts about how to accommodate the collection of this fee. If you are not a JIS court, you will need to contact your vendor for instructions.

SCAO will notify courts when the proposed legislation is adopted. If you have any questions, please feel free to contact Jennifer Warner at TrialCourtServices@courts.mi.gov or 517-373-7496.

³ Each court has a local administrative order providing for access to records that includes the amount the court may charge for making copies.